

**MINUTES OF THE
JANUARY 27, 2005
MEETING OF THE MITIGATION BANK REVIEW TEAM
FOR THE SU-KNIK ENVIRONMENTAL BANK**

On January 27th, 2006, Sustainable Environments, LLC, the sponsors of the Su-Knik Environmental Bank (the "Bank"), had a "Pre-Application" meeting with the probable Mitigation Bank Review Team for that Bank. The meeting was held at the Historic Anchorage Hotel, in Anchorage, Alaska. These are the minutes of that meeting. (It should be noted that the discussions at the meeting were complicated and far-ranging, and often a topic was raised more than once or in different contexts. These minutes reflect that fact in most places, and thus jump from subject to subject and are repetitive. However, an effort has been made to organize these minutes without losing the sense of the meeting. Therefore, certain parts of these minutes report items in a different order in which they were raised or discussed.)

One purpose of these minutes is to set down a list of "action items" and "follow up" for attendees of the meeting. To make the minutes more useful for that purpose, action items and follow up matters are reported in **bold face type** and are underlined. The meeting was called to order at 8:30 AM. The following members of the Mitigation Bank Review Team (the "MBRT") were present:

Steve Duncan of the Environmental Protection Agency ("EPA")
Jim Powell of the Department of Environmental Conservation ("DEC")
Skip Joy of the Army Corp of Engineers ("ACOE")
Phil Brna of the United States Fish and Wildlife Service ("USFWS")
Larry Peltz of the National Marine Fisheries Service ("NMFS")
Mike Bethe of the Department of Natural Resources ("DNR")

The following representatives of the Sustainable Environments, LLC (the "Sponsors") were present:

Dr. Kevin Noon (knoon@criticalhabitats.com)
Jerome Ryan (Jerome_ryan@yahoo.com)
James Blythe ("Jake") Hodge (Jamesbhodge@yahoo.com)

Representatives of The Nature Conservancy also attended.

Two weeks before the meeting, the Sponsors had provided the members of the MBRT certain informational memoranda that members of the MBRT had requested in order to prepare for the meeting. Jerome Ryan distributed additional copies of those memoranda to the members.. Steve Duncan also brought written information relating to MBRT's including copies of the *Federal Guidance for the Establishment, Use and Operation of Mitigation Banks* Federal Register, November 28, 1995 (Vol. 60, No. 228, p. 58605-58614) (the "1995 Guidance"), and some course materials related to the 1995 Guidance, and he distributed those.

RECEIVED

MAR 20 2006

EPA
ANCHORAGE A00/A

The Sponsors asked if they could record the meeting in order to create more accurate minutes; the members consented.

The Sponsors introduced Kent Smith, who attended the meeting via conference call from California. He is the Assistant Regional Manager of Mitigation Banking for the Central Valley Region of the Fish and Game Department of California and is a paid consultant to the Sponsors.

The Sponsors had drafted an agenda for the meeting. Mr. Ryan explained that the discussion suggested by the agenda was intended to help create a common understanding of mitigation banking from which the Bank Sponsors and the MBRT could work together, to form the MBRT, to set out a pathway for the certification process, to provide a brief overview of the site selection process, and to discuss any immediate hurdles or issues that needed to be dealt with.

Jake Hodge briefly explained how Sustainable Environments became the "partner" of the Mat-Su Borough in the creation of the 11,000 acre preservation Bank that the Sponsors were proposing. Please see the document titled "Overview of Background Information" that was provided to the MBRT members prior to the meeting.

The Sponsors requested that the meeting be deemed the official "pre-application meeting" and the start of the formal certification process.

The Sponsors expressed their desire to be as helpful as possible to the MBRT, and asked what they might do to help the MBRT members.

A member of the MBRT asked the purpose of the Bank. Mr. Hodge answered that it was intended to allow the Borough to control growth, to allow for an efficient mitigation process, to generate revenue, and to insure that the land would be well-used in perpetuity.

Steve Duncan re-stated the Borough's interest to make sure that he correctly understood its motivation. As he perceived it, the Borough has large tracts of land from which it would like to derive revenue, that the Borough was not satisfied with how the lands were used when it sold those lands without retaining control, and that it desired to protect the environmental and recreation value of the lands, while dealing with the rapid growth in the Borough and providing for the needs for mitigation. The Sponsors concurred with this summary.

Skip Joy noted that there was not much ability or opportunity for the Army Corps of Engineers (the "Corps") to provide for preservation mitigation possibilities, that the Corps has had doubts that the mitigation it had required in the past had actually been appropriate, and that there has been little accountability in regards to the mitigation that has been provided. Mr. Joy said that the Corps was looking for a more appropriate way to enforce mitigation requirements. He said that the Corps would begin to require more mitigation, and to insure that the mitigation required was appropriate.

Steve Duncan noted that the proposed Bank would provide the Corps with an opportunity to enforce mitigation in the Borough, which will be important given the amount of past and expected future growth in the Mat-Su region.

Jim Powell noted that the Bank would be best situated in the context of a total understanding of the ecological resources in the region, and asked how it fit in with the Borough Comprehensive Plan. The Bank Sponsors discussed the site selection process, and the information resources that they used; and noted that the Mat-Su Borough Core Area Comprehensive Plan and the Meadow Lakes, Wasilla, Palmer, Houston growth plans, and several Mat-Su Borough Community Councils' regional plans, were reviewed for any opportunity to create the Bank that will complement their ecological resource protection objectives.

[Not discussed at the meeting but additional information: Unfortunately, resource protection objectives are not specified in the plans. The plans simply show where the zoned growth and development is slated to occur. This information supports the Sponsors' selection of the Bank properties as located in the path of development. However, there are two plans that discuss potential loss of ecological resources: the Mat-Su Coastal Management Plan and the Willow Sub-Basin Plan that were used to support the assumption that large tracts of wetlands and uplands should be preserved within the watersheds under immediate threat of development.]

Phil Brna noted that the area that the USFWS was really worried about was the area around the Big Lakes region, where there were very few Borough land holdings, and that the majority of the lands the MBRT was concerned about was privately held. Mr. Joy noted that the members of the MBRT had previously discussed this issue, and that it would be very difficult to expect this Bank to deal with and resolve it. The Sponsors also noted that the Knik Arm Crossing plan and the multi-modal projects had changed the expectations regarding where the major development regions in the Mat-Su Borough would be. The Port MacKenzie area was now expected to be developed much more rapidly.

At that point the Sponsors went over an outline of the Certification Process. For further detail please see the "Certification Process Overview" paper that the Sponsors supplied to the MBRT members before the meeting.

The Sponsors noted that they had requested, as a major divergence from the normal certification process, that they create a "Summary Prospectus." The Summary Prospectus would be a shorter form of the full Prospectus. The intention would be to make sure that the Sponsors' proposal was conceptually feasible before the Sponsors created a fuller more detailed version of the Prospectus. The MBRT members concurred with this approach.

Steve Duncan noted that after the MBRT had accepted the Prospectus as conceptually feasible, and the Mitigation Banking Instrument (the "MBI") was in good form, that the

MBRT would issue a Public Notice and the public would have thirty days to respond to it.

The Sponsors asked if there were other issues or steps to the certification process that they had missed in their summary. The MBRT agreed with the process, but Jim Powell noted that it would take time to get the signatories up to speed and educated on the process. It was noted that the legal review for the SEAlaska project took a long time. The Sponsors asked if the fact that there was already a bank certified would help to speed-up the process of the proposed Bank. The MBRT members responded that they expected that it would since most of the State and Federal Agencies had already been through the process and had signed the documents creating one bank so that the process and the precedent were set, but that there would be different signatories for this Bank because of the location.

One of the members of the MBRT asked how many preservation banks there were in the lower 48 States. Kent Smith said that preservation banks in the other states were used in much the same way and for the same reason that they would be appropriate in Alaska. He said that this was because in some cases there was no opportunity to provide for mitigation through restoration, and that preservation banks are part of a larger land management process. Mr. Smith stated that although he did not know of the exact number of preservation banks, there were many examples of preservation banking being used either as part of a restoration bank or entirely on their own.

At this time the meeting moved on to a discussion of the general concept of preservation banking. The Sponsors reviewed the "Preservation Overview Paper" that the Sponsors had provided, as well as the Preservation Banking Paper that Kent Smith had provided. As a synopsis, preservation is treated differently in the lower 48 States because there are many more options to provide for compensatory mitigation. The applicable regulations were written with the situation of the lower 48 States in mind. They were written, in part, to stop the further destruction of wetlands, and to provide for the restoration of the 100 million acres of wetlands that had already been destroyed. The situation is different in Alaska. Less than one tenth of one percent of the wetlands in the State have been impacted. Preservation is the one option in Alaska, and can also be used as a growth management tool to target areas to preserve.

Steve Duncan noted that the opportunity for restoration and creation are very limited in Alaska. That although one tenth of one percent of the total wetlands have been impacted, this is not the case in the urban areas, like the Mat-Su Borough, a fact which he said further supported the need for the creation of a bank. Mr. Duncan also stated that since there has not been much mitigation required, there is going to be some friction created when people are now required to provide for mitigation, and the presence of the proposed Bank will be a good first step to get people accustomed to the idea of required compensatory mitigation, in as easy a way as possible. Mr. Duncan continued that avoidance and minimization will still be required, and if there are opportunities for onsite restoration they will still be first priority, but that there has been very little ability to require restoration.

A member of the MBRT asked how the comprehensive resource inventory plans that have been spoken about for years would work with the Bank. Steve Duncan spoke to this. He said that a basic concept was to pool the different Agencies' resources and put together a database to which everyone would have access, and that would take a more comprehensive look at the resources in the Borough, given that there was still a lot unknown as to the whereabouts and quality of the wetlands and riverine areas. Ultimately this would result in a functional assessment of the Borough. He said that the functional assessment of the Bank lands could be an opportunity to start mapping these assets in the Borough. Mr. Duncan continued to elaborate on the concept of the "Functional Value Index" as the tool that would be used to account for ecological value of the land both within the Bank, and the lands proposed for impacts requiring permits.

Phil Brna stated that the USFWS was a year into a three year in-depth review of Big Lake and Fish Creek from a functional and hydrological perspective, and noted that this information may be of interest to the Sponsors.

The meeting then broke for a 10 minute recess.

The meeting reconvened, and turned to topic of the site selection process that the Sponsors had gone through, and how it worked in conjunction with the Borough and its comprehensive plan. The Sponsors handed out the Site Selection Matrix that they used to rank the potential properties. Dr. Noon noted that the threat of development and negative impact was the most heavily weighted input of all of the variables listed on the matrix hand out. The National Wetland Inventory ("NWI") was the primary GIS tool used to assess where the wetlands were on the Borough land holdings. He said, however, that as part of the certification process there would be a much more in-depth functional assessment made of these lands. The Sponsors stated that it was their plan to create an umbrella banking agreement that would allow for the dynamic inclusion of non adjacent lands under the management of the mitigation banking agreement.

The members of the MBRT asked a series of questions to clarify the matrix that had been presented by the Sponsors.

A member of the MBRT asked where the demand for the first Big Lake bank area was expected to come from. This led to a discussion of the likely service area, and to the issues related to the ability to trade functions across the Borough. It was stated that the USFWS would have issue if the service area allowed for impacts to the very highest quality wetlands left in certain areas. There would be a requirement by the USFWS that any trading of ecological functions with the Bank would involve a review of the proposed impacted area's functions relative to those proposed to provide for mitigation. The USFWS, especially where the impact to fisheries was concerned, would want to see trading only within watersheds, and not across watersheds. Skip Joy noted that the MBRT would like to provide for such protection, if possible, but that the USFWS would have to officially take a stance that any more permits for impacts on these areas would damage beyond repair the anadromous fish runs. Phil Brna duly noted that this would be

the case, and acknowledged that this would be very politically difficult to do, but that they were concerned. Mr. Joy noted that the permit review process that is currently in effect, which called for the affected Agencies to review applications for permits submitted to the Corps, would remain in effect after a mitigation bank was available for mitigation, and that the USFWS would always have the ability to comment relating to individual permit applications using this course.

Mr. Brna commented that it would be his desire to have the small wetlands areas around some of the most developed areas preserved, but that this would be difficult because they were privately held properties, and of questionable ecological value given the lack of buffer from impacts to adjacent lands. It was acknowledged that to protect these remnant wetland areas was a valid goal, but that it was outside of the realm of what would be probable for this Bank to accomplish. This resulted in a discussion of the effect of not having an avenue of mitigation available, compared to that of having the Bank establishment of the Bank, and of the advisability of having an ability to provide for mitigation even if it was not in the location that would be most appropriate.

There was a long discussion of service area issues and interagency issues related to how the MBRT would interact with the Bank, and issues related to available resources and information. Much of this discussion was related to the need to attempt to acquire private lands, the last most highly valued wetlands left in certain regions. It was determined that this was not a discussion that was appropriate for this meeting, but needed to be dealt with among the members of the MBRT in another forum. It was also noted that the issue of acquisition of private lands was not an appropriate topic for the certification process of a specific bank, as it fell outside of the jurisdiction of what the certification process is intended to cover. It was noted that with the dynamic option of the umbrella banking instrument certain private lands could potentially be included in the Bank.

The members of the MBRT discussed the need for a comprehensive plan of the Borough to make an intelligent decision regarding what lands to target for acquisition. Steve Duncan noted that it seemed that an overview functional assessment of the service areas proposed would be required to provide for this information gap in what was appropriate to trade with what. He suggested that there would need to be a functional assessment of what was being proposed for impact under the permit, and that this could then be used to validate the use of the Bank as compensatory mitigation. It was noted that the Agencies may need to come together and discuss how to focus their resources on how to protect the best property remaining, outside of the realm of the Bank. The Sponsors suggested that the MBRT remember that these issues were relevant, but that it should also remember that there were two more important considerations. The first was that having a bank as an option was better than the status quo--of no options for compensatory mitigation. The second was that the amount of mitigation in the area that the Bank would provide compensation for would be relatively small and therefore these issues would still need to be worked out regardless of the presence of the Bank.

Jim Powell noted that the service area discussion was a large component of the certification process, and that it would need to be address in depth at a later time when there was more information available to support claims.

Mr. Brna said that it would be important that the overall quality of the Bank land be high enough that it would be appropriate for mitigation somewhere. Mr. Joy said that there would be plenty of development pressure to support these sites. He said that the critical issue, again, was an understanding of what is there.

The members of the MBRT asked where the funds would come from to provide for the functional assessment. The Sponsors said that they had investors, but that if the service area was too small they would be unable to make the Bank work from a financial point of view. They further noted that it may make sense to perform the ecological assessments in stages. In that way only small regions would be assessed, and credits could be released to be used as compensation for those discrete areas. As demand for additional credits seemed to exist, additional areas could be assessed.

Steve Duncan noted that at this time it would be proper to look at the Bank proposal as one creating an umbrella agreement, that could include all the potential sites, and that would look at the 9000 acres near Big Lake as the first site specific bank that would be included. He suggested that at the same time the MBRT and the Sponsors could have the option of looking at the other potential sites available to address these issues. Mr. Duncan continued that there would be a discussion of the service area for the umbrella bank, and then a service area for each of the specific sites. Regardless, each permit would be reviewed on a case by case basis.

The Sponsors asked whether, if it was determined that a site requiring mitigation could not use the Bank as compensation and no other compensatory mitigation were available to the permittee, the Corps would then deny the Section 404 application. This question was discussed, and it was noted that less then 2% of Corp permits have been denied, and that historically there has been very little mitigation required. The Sponsors said that, given this history, at least the Bank would provide for some mitigation, even if such mitigation was not the most appropriate. Mr. Joy noted that the USFWS concern was that if this Bank's functional index was so low, then it would not matter if it was used as mitigation, but that that was the reason for the need to understand the functional index of the proposed Bank.

The meeting discussed the possibility of contacting the large land holders in the Boroughs regarding the potential to acquire other areas of high value wetlands for preservation purposes. It was again noted that this would be time consuming and difficult,

Larry Peltz noted that it was not going to be possible to develop a bank that would meet all needs, but that some compromises would have to be reached. Skip Joy summarized the process by saying that the MBRT must do its best with what was available. He said

that the process could not fix all the problems that currently existed, even though that might have been possible ten years ago. He said that the proposed Bank could provide another option to deal with today's problems, and those that would arise over the next 10 years. He said that his view was that the proposed Bank needed to be easy to use for all concerned, the Agencies, the Bankers and the permittees. He said it must be ecologically appropriate and economically appropriate or it will not work. He added that since this was the first Bank in this area, it should be done in the best way practical and then could change and evolve over time.

The discussion turned to the steps that needed to be taken to certify the proposed Bank. The MBRT advised that the process should start with the education and socialization of the people in the Agencies that will actually be the signatories. Steve Duncan suggested that the Sponsors take a comprehensive approach by using an umbrella agreement. He suggested that the Sponsors look at all the areas that could be brought into the Bank, and concurrently work on the site specific Big Lake Bank. **He requested that the Sponsors begin by creating a single map showing all of the proposed properties. He said that the black and white 8.5 x 11 inch maps were inadequate. He said that what the MBRT needed were large maps in both paper and electronic copies. He asked that on the site-specific banks, jurisdictional determination be provided. This would require wetland delineation maps showing the wetlands and the streams. He said that a map showing only the NWI would not be sufficient. He said that in the future the MBRT would need maps that they could all read and understand**

Mr. Duncan said that when it came to the site specific bank, the MBRT would require a ground truthed jurisdictional determination. This determination will lead to a discussion of the service area, before there is a functional assessment. At that time there should also be a discussion of the required service area to make sure that the service area that is ecologically appropriate will also be economically viable. He said this process would allow for agreement on the proposal before the Sponsors incurred the expense of a functional assessment.

There was a short discussion on the available information. The National Resource Conservation Service photo maps, with hydric soils, were determined to be better maps than the NWI. Mr. Brna also noted that the USFWS also has GIS data that may be good. The Sponsors proposed to use these photo maps and ground truthing to provide for the wetland delineation.

The next steps were determined to be to decide the make-up of and the contents of the umbrella agreement, and the information to include regarding the three proposed sites.

Jim Powell and Steve Duncan stated that they would give the Sponsors the umbrella agreement and site specific agreements for the SEAlaska Bank.

A member of the MBRT asked who the applicant for the Bank certification would be. The Sponsors said that it would be a separate and new LLC or other entity with probably two members, the Borough and Sustainable Environments, LLC. Sustainable

Environments would be the managing partner of the applicant and the Borough would be a non-managing "partner." The Sponsors offered to go into more detail regarding the legal structure, but the MBRT said that it was premature.

A member of the MBRT asked about two rumors. He said that first it had been said that the Great Lands Trust would be the long term manager of the lands. The Sponsors said that this had not been discussed or considered. They said that the identity of the long term manager would be a question taken up later with the MBRT and that the MBRT would have a right of approval. Second, it had been said that one John Hall had been seeking grants on the Bank Sponsors' behalf to provide for the functional assessment. The Sponsors said that they did not know who John Hall was, and very clearly understood that no governmental sourced funds could be used to aid the Sponsors in their work to certify the Bank.

At this point a question Mr. Duncan asked why representatives of The Nature Conservancy were attending the meeting. Steve Duncan noted that future meetings would be closed to the public, as required by the 1995 Guidance *Federal Guidance for the Establishment, Use and Operation of Mitigation Banks* Federal Register, November 28, 1995 (Vol. 60, No. 228, p. 58605-58614). Phil Brna noted that he had invited them to attend the meeting.

The meeting turned to a discussion of the next steps to take in the process.

Turning to the make-up of the MBRT, Mr. Duncan said that the MBRT should probably be composed of the four federal agencies—that is, the Corps, EPA, USFWS, and NMFS - and State and local agencies that have any regulatory authority permitting oversight. He said that those State and local agencies would probably be DEC (related to the Clean Water Act Section 401 Certification Process) and DNR (related to management and permitting). It was noted that the Alaska Coastal Management Commission was not present at the meeting, but it had been kept informed loop and had been delivered all the preparatory materials.

The Sponsors asked if there was any official process that needed to be taken to constitute the MBRT. Mr. Duncan said that when the Sponsors had prepared the Banking Prospectus and delivered it to the MBRT, the MBRT would be officially formed. The MBRT would then ask the participating Agencies to commit the personal. The Sponsors asked who had signed the SEAlaska MBI. The MBRT reported that all of the agencies attending the meeting, except for DNR, had signed.

The Sponsors asked what they could do to assist the MBRT in preparing their Agencies for execution of the Mitigation Banking Instrument. **Mr. Powell confirmed that the maps, and a short, 1 page, executive summary of the process would suffice.** Mr. Powell noted that the "Overview Papers" that the Sponsors had provided would provide any additional information required. The MBRT would be open to reviewing a draft of the executive summary and supplying comments.

The MBRT asked what inventory of habitat information was available? Phil Brna stated that Anadromous streams and the existing bald eagle nests are widely known and are digitized and on the internet. Fish and Game would have the moose information. Information on the Cook Inlet Regional Assessment would be available from The Nature Conservancy. The Knik Arm Crossing will have done resource mapping of approximately 100,000 acres north of the bridge, and would be a good source of information.

The Sponsors asked again if providing a "Summary Prospectus" would be a good idea. The MBRT thought that it was and welcomed the concept as a way of streamlining the process.

Finally, it was suggested that the Sponsors send a "prod email" as a reminder to the MBRT members to suggest sources of information that may be of use in the resource determination.

The meeting was adjourned at 11:45 AM without the selection of a date for the next meeting.